

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

ROBERT J. CORDICE,

Plaintiff,

vs.

MEAGHER COUNTY, et al.,

Defendants.

CV 17-50-GF-DLC-JTJ

ORDER

Pending is Plaintiff Robert Cordice's Motion to Reopen Case. (Doc. 8). This pro se non-prisoner case was filed on May 3, 2017, against the named Defendants Meagher County, Sheriff Jon Lopp, Kimberly Deschene, the Honorable John Wells, Jerry Churchill, Attorney General Tim Fox, and Brian McNamee (the "Defendants"). (Doc 1). On June 9, 2017, Mr. Cordice filed a Notice of Voluntary Dismissal. (Doc. 6). This is Mr. Cordice's first voluntary dismissal of the case, and none of the Defendants had filed an answer or a motion for summary judgment in this case before his dismissal was filed. Pursuant to

Federal Rule of Civil Procedure 41(a), Mr. Cordice's action was dismissed without prejudice on that date with no need of a court order.

Mr. Cordice now seeks to reopen the case. In his original "Motion to drop charges on the above case" (hereinafter "Notice of Voluntary Dismissal"), Mr. Cordice stated as his reason for dismissing the case was that "[t]oo many years have gone by & have forgotten much[;] want to close this case dropping charges." (Doc. 6 at 1). On June 21, 2017, however, Mr. Cordice sent a letter to the district court, stating his "true statement of why [he] closed his case." (Doc. 7 at 1). In his letter, Mr. Cordice stated that he "did not forget what [the Defendants had] done" to him, but that he feared the "Legal[sic] system in Montana and Meagher County." (*Id.*) In his one-page September 14, 2017 Motion to Reopen Case, Mr. Cordice requested that his case be reopened because "[t]his is America not a Third World Country we are supposed to have Law & Order Justice[sic] equal for all." (Doc. 8 at 1). He also stated that his "health is a problem." (Doc. 8). He asked the Court to reinstate his case and also requests a speedy trial. (*Id.*) Finally, on October 26, 2017, Mr. Cordice filed a letter with the Court asking it to "[p]lease re-open [his] case."¹ (Doc. 9).

¹ The letter was filed by the Court on November 6, 2017 as another "Motion to Reopen Case." (Doc. 9).

Whatever his reason for dismissing his case,² Mr. Cordice's case was closed on June 9, 2017, the date of his Notice of Voluntary Dismissal. "A voluntary dismissal by a plaintiff under [Rule 41(a)] automatically terminates the action upon the filing of the dismissal with the clerk. No order of court is required." *Miller v. Reddin*, 422 F.2d 1264, 1266 (9th Cir. 1970) (citation omitted). Moreover, once the case is closed on plaintiff's voluntary motion, the plaintiff, defendant, and the Court are all powerless to revive the case:

So long as plaintiff has not been served with his adversary's answer or motion for summary judgment he need do no more than file a notice of dismissal with the Clerk. That document itself closes the file. There is nothing the defendant can do to fan the ashes of that action into life and the court has no role to play. This is a matter of right running to the plaintiff and may not be extinguished or circumscribed by adversary or court. . . . Its alpha and omega was the doing of the plaintiff alone. He suffers no impairment beyond his fee for filing.

Bechuck v. Home Depot U.S.A., Inc., 814 F.3d 287, 291 (5th Cir. 2016) (quoting *Am. Cyanamid Co. v. McGhee*, 317 F.2d 295, 297 (5th Cir.1963)). As such, the Court is not able to reopen Mr. Cordice's case because he voluntarily dismissed it.

While Mr. Cordice is correct that the United States District Court for the District of Montana is a part of "America," there is no basis upon which to reopen

² By signing and filing his reasons for dismissing his case in his Notice of Voluntary Dismissal and later indicating that it was not his "true statement," Mr. Cordice may have run afoul of Fed. R. Civ. P. 11(b).

this matter. Mr. Cordice voluntarily dismissed his claim against the Defendants pursuant to Rule 41(a). Because this is his first voluntary dismissal, his claim has been dismissed without prejudice, meaning Mr. Cordice is free to re-file his complaint.

Accordingly, IT IS HEREBY ORDERED that Mr. Cordice's Motion to Reopen Case (Doc. 8) is DENIED.

DATED this 6th day of November, 2017.



John Johnston
United States Magistrate Judge